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Department of Homeland Security

Bureau of Citizenship and Immigration Services

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OFFICE OF ADMINISTRATIVE APPEALS

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536

FILE [REDACTED] Office: Houston

Date:

MAY 08 2003

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 320 of
the Immigration and Nationality Act, 8 U.S.C. § 1431

ON BEHALF OF APPLICANT: [REDACTED]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant was born on July 9, 1986, in Venezuela. The applicant's father, [REDACTED] was born in Venezuela in May 1958 and is a lawful permanent resident. He never had a claim to U.S. citizenship. The applicant's mother, [REDACTED] was born in Venezuela in December 1962 and became a naturalized U.S. citizen in May 1987. The applicant's parents married each other on April 7, 1982. The applicant was lawfully admitted for permanent residence on November 20, 1986. The applicant is seeking a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The acting district director reviewed the record and the application that was filed on May 9, 2002, and noted that the mother's address was not listed on the application. He noted that the applicant's address coincided with the father's address. The acting district director concluded that the applicant had failed to establish that she was residing in the legal custody of the citizen parent. He also noted that the applicant failed to submit a copy of the mother's naturalization certificate upon request. The acting district director then denied the application on January 7, 2003.

On appeal, counsel states that until recently the Prosperi family maintained a residence in Texas and one in Venezuela. This assertion is unsupported in the record by evidence other than the listing of addresses. Counsel states that the Venezuelan residence is not being occupied and the family residence has now changed to Florida. Counsel submits a copy of a seven-month rental agreement for an apartment in Coral Gables, Florida, for the parents and three unnamed children and a copy of a receipt showing that the applicant was enrolled as a new student in La Salle High School in Miami, Florida in the 11th grade. Both documents are dated after the date of the Bureau's adverse decision.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthday as of February 27, 2001. The applicant was 14 years and 7 months old on February 27, 2001. Therefore, she is eligible for the benefits of the CCA.

Section 320(a) of the Act, effective on February 27, 2001, provides, in part, that a child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
- (2) The child is under the age of eighteen years.

(3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Although the applicant's mother failed to submit a copy of her naturalization certificate, she indicated on the application that she naturalized in May 1987 in Houston, Texas, and she provided her Service file number. The AAO fails to understand why Service records could not be checked to verify this assertion. The record indicates that she lost her naturalization certificate and submitted a Form N-565 requesting a replacement of that document. The mother's U.S. passport was issued on January 18, 2000.

A Bureau memorandum dated February 26, 2001, states that, in the case of persons who were lawfully admitted for permanent residence as a member of a family that immigrated..., the requested documents are frequently in the A-file of the principal applicant in the immigration process. The memorandum states that all offices should review procedures to request the needed A-files as soon as possible after the receipt of an application for a certificate of citizenship.

The memorandum also states that for children admitted as lawful permanent residents prior to February 27, 2001, the Bureau will presume that the U.S. citizen parent had legal custody, if the child is still living with and in the physical custody of the citizen parent on February 27, 2001, the date the CCA became effective. The record fails to contain evidence that the applicant was in the legal custody of her U.S. citizen mother, in the United States, prior to February 27, 2001.

After February 27, 2001, the date reflected on an individual's certificate of citizenship will be the date when the last requirement needed to acquire citizenship automatically under section 320 of the Act is met. The documentation in the record now shows that the mother became a U.S. citizen at least by January 18, 2000, that date her passport was issued, and the applicant, according to the school admission receipt and the rental agreement, is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission. Therefore, the applicant automatically acquired U.S. citizenship on January 15, 2003, the date that the last requirement was satisfied according to the present record, at the age of 16 years and 7 months.

Pursuant to 8 C.F.R. § 341.2(c), the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has met that burden. Therefore, the appeal will be sustained.

ORDER: The appeal is sustained. The acting district director's decision is withdrawn, and the application is approved.